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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

USSC HOLDINGS CORP., et al.,

Plaintiffs,

vs.

TK PRODUCTS, LLC., et al.,

Defendants.

3:16-cv-00398-RCJ-WGC

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANTS'
MOTION FOR SANCTIONS/MOTION
TO COMPEL**

(Re: ECF No. 42)

Before the court is the motion of Defendants TK Products, LLC, Kurt O. Bauer and Trent Farrer to hold Livespark, Inc., in contempt and to compel Livespark's compliance with a subpoena (ECF No. 42). No response has been made to Defendants' motion either by Livespark or other parties to this action.

The court denies Defendants' motion without prejudice because of what the court perceives as procedural irregularities with regard to Defendants' underlying subpoena and motion.

As a starting point, due process requires that the individual or company against whom contempt is sought receive notice and have an opportunity to be heard. *See, e.g., U.S.S.E.C. v. Hyatt*, 621 F.3d 687, 694 (7th Cir. 2010). According to the certificate of service accompanying Defendants' motion, service was only made via CM/ECF upon counsel for Plaintiffs. (ECF No. 42 at 6.) The failure to serve Defendants' motion for sanctions/motion to compel upon Livespark - or even upon its resident agent upon which the subject subpoena was served - is problematic for the court.

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1 It further appears to the court that the validity of the service of the subpoena upon the entity
2 which is apparently the *resident agent* of Livespark, i.e., Nevada Legal Forms and Tax Services, Inc.
3 (ECF No. 42-1 at 10) is somewhat suspect. Rule 45(b)(1) requires a Rule 45 subpoena for testimony
4 to be delivered to the named person, also tendering the fees for the witness' attendance (and mileage).
5 Although the subpoena served on Livespark included payment of an amount for witness fees (ECF No.
6 42-1 at 10), again it was not personally served on the custodian of records or any corporate representative
7 of Livespark who would testify at the deposition. The viability of the service of a subpoena upon a
8 corporation's resident agent for deposition testimony is problematic to the court.

9 The court is also concerned about the place of compliance of the subpoena. Obviously the
10 deposition was attempted to be undertaken in Las Vegas where Livespark's resident agent has its place
11 of business. Counsel's declaration states she (Sandra Gustitus) unsuccessfully attempted to contact a
12 "Brett Bond at 415-613-3872" to discuss the "next day's deposition." (ECF No. 42-1 at 3.) Ms. Gustitus
13 does not explain Brett Bond's connection to Livespark or the location of the 415 area code phone
14 number, which appears to be based in the Bay Area, California.¹

15 Because of the reference to the 415 telephone number, the court researched Mr. Bond/Livespark
16 on the internet. As reflected in the print out of the court's internet search (copy attached as Exhibit 1),
17 Bloomberg reports Mr. Bond is President of Livespark, the corporate headquarters being at 60 29th
18 Street, San Francisco, California 94110.² Bloomberg lists the same telephone number for Mr. Bond as
19 is contained in the Chenowith declaration. See Exhibit 1.

20 Rule 45(c) authorizes a subpoena if within 100 miles of the deponent's residence or place of
21 business. If Mr. Bond and Livespark are located in San Francisco, the validity of a subpoena to produce
22 documents at and to attend a deposition in Las Vegas does not appear to satisfy the requirements of Rule
23 45. At the very least, one would have suspected Defendants would have served Livespark/Bond at the
24 San Francisco address which was seemingly available to counsel for Defendants.

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26 ¹The court notes that counsel for Defendants only attended the deposition by telephone (ECF No. 42-1
27 at 24), apparently in anticipation that no witness from Livespark would attend.

28 ²<http://www.bloomberg.com/research/stocks/private/person.asp?personId=249349481&privcapId=249248967&previousCapId=249248967&previousTitle=LiveSpark,%2520Inc>

1 The Livespark subpoena sought both documents from and *testimony* of a Livespark
2 representative. (ECF No. 42-1 at 4.)³ Although it appears notice of the subpoena duces tecum was
3 served on counsel for Plaintiffs (ECF 42-1 at 14), in compliance with Fed. R. Civ. P. 45(a)(4), inasmuch
4 as the subpoena also sought the testimony of the deponent (“Custodian of Records of Livespark”), a
5 Notice of the Custodian’s Deposition was additionally required. Rule 30(b). Defendants have not
6 included any notice of records custodian deposition testimony with their motion. While the absence of
7 a formal and separate notice of deposition might be excused because of Defendants’ service of the notice
8 of the subpoena upon Plaintiffs (Defendants’ counsel also conferred with counsel for Plaintiffs; ECF No.
9 42-1 at 24), the lack of service of a notice of deposition is troubling.

10 Accordingly, because of issues relating to Defendants’ compliance with and satisfaction of
11 Fed. R. Civ. P. 45, Defendants’ motion (ECF No. 42) is **DENIED** without prejudice. Defendants may
12 renew their motion, however, to attempt to resolve the issues expressed by the court. If Defendants do
13 so, a renewed motion, as well as Defendants’ original motion, shall be served on Livespark’s resident
14 agent and a copy should be served upon Livespark’s place of business.

15 **IT IS SO ORDERED.**

16 DATED: January 26, 2017.

17 
18 WILLIAM G. COBB
19 UNITED STATES MAGISTRATE JUDGE
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27 ³ Defendants’ motion states “the subpoena commanded Livespark’s appearance on October 20, 2016,
28 at 9:00 a.m., as well as the production of documents at the same time and place.” (ECF No. 42 at 3.) (emphasis
added)

EXHIBIT 1

1/25/2017

Brett Bond: Executive Profile & Biography - Bloomberg

Media

Company Overview of LiveSpark, Inc.

January 25, 2017 6:00 PM ET

Snapshot

People

[Overview](#)
[Board Members](#)
[Committees](#)

Executive Profile

Brett Bond

President, LiveSpark, Inc.

Age Total Calculated Compensation This person is connected to **0** Board Members in **0** different organizations across **1** different industries.

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Background

Mr. Brett Bond serves as the President of LiveSpark, Inc. Mr. Bond founded LiveSpark in 2009. Furthering his work of digitally controlled fire, Mr. Bond founded False Profit Labs in 2008. Mr. Bond has been building software companies and large-scale interactive fire sculptures for almost a decade. In 2003, he created The Hydrogen Economy, where participants ignite hydrogen bubbles that explode. As co-creator of PyroCadium, Mr. Bond built a sculpture that responds in ...

[Read Full Background](#)

Corporate Headquarters

60 29th Street
San Francisco, California 94110

United States

Phone: 415-613-3872

Fax: --

Annual Compensation

There is no Annual Compensation data available.

Stocks Options

There is no Stock Options data available.

Total Compensation

There is no Total Compensation data available.

Board Members Memberships

There is no Board Members Memberships data available.

Education

There is no Education data available.

Other Affiliations

There is no Company Affiliations data available.

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